TO: Criminal Law Advisory Commission Members & Consultants

FROM: Peter G. Ballou and Stephen L. Diamond

RE: Meeting of February 18, 1977

Enclosed is the second package of amendments prepared for consideration by the Commission. The items included therein vary in their urgency, and we do not necessarily expect that the Commission will be able to address all of them in the immediate future. Nevertheless, we felt it advisable to send the entire package to the Commission as soon as it was completed.

AGENDA

Except when otherwise noted, the page references are to the second (enclosed) package.

TABLED

1. Amendment to §901 (p. 17). An attorney from the Consumer Fraud Division is expected to appear on behalf of this amendment.

2. Amendments to §§1205 and 1206 (pp. 21-28). A representative of Probation and Parole is expected to appear on behalf of these amendments.

3. Amendment to §753 (p. 15).

4. Amendment to §755 (p. 16).

5. Probated fines (p. 18).

6. Amendments to §1201 (p. 19).

7. Amendments to §1204 (p. 20).

8. Transportation of explosives problem (p. 45 of first package).

9. Amendments regarding territorial jurisidiction (pp. 3-10).

MEETING

The meeting is scheduled for Friday, February 18, at 10:00 A.M. It will be held in Room 114 of the State Office Building.

Conversion--§4-A

Alternative 1: Postpone §4-A

17-A M.R.S.A. §4-A, sub-§1, ¶B, as enacted by P.L. 1975, c. 740, §14, is amended to read:

B. For all other purposes, this section shall become effective October 1, ~~1977~~ 1978.

Alternative 2: Repeal §4-A

17-A M.R.S.A. §4-A, as enacted by P.L. 1975, c. 740, §14, is repealed.

17-A M.R.S.A. §1, sub-§2, 3rd sentence, as last amended by P.L. 1975, c. 740, §10, is amended to read:

In such cases, the sentencing authority of the court is determined by the application of ~~section 4-A, subsection 3~~ subsection 2-A of this section to the prior law.

17-A M.R.S.A. §1, sub-§2-A, is enacted to read:

2-A. For purposes of determining the sentencing authority of the court under subsection 2, the sentencing class of statutes defining crimes repealed by this code depends upon the imprisonment penalty that was provided as follows. If the maximum period authorized by the statute defining the crime:

A. Exceeded 10 years, the crime is a Class A crime;

B. Exceeded 5 years, but did not exceed 10 years, the crime is a Class B crime;

C. Exceeded 3 years, but did not exceed 5 years, the crime is a Class C crime;

D. Exceeded one year, but did not exceed 3 years, the crime is a Class D crime; and

E. Did not exceed one year, the crime is a Class E crime.

Note: If §4-A is repealed, the Criminal History Record Information Act might be amended to the effect that a conviction for an offense not punishable by imprisonment would not be included in a person's criminal record.

Alternative 3: Allow §4-A to take effect

Note: If this alternative is adopted, it will probably be necessary to determine whether some of the affected statutes should be exempted from §4-A. In addition, there will probably be a need for some clarification, such as whether §4-A applies to municipal ordinances.

ALTERNATIVE A

17-A M.R.S.A. §7, sub-§1, ¶A, as enacted by 1975 Laws, c.499, §1 is amended to read:

A. Either the conduct which is an element of the crime or the result which is such an element ~~occurs within~~ has a territorial relationship to this State; or

17-A M.RS.A. §7, sub-§1, ¶C, as enacted by 1975 Laws, c.499, §1 is amended to read:

C. Conduct occurring outside this State would constitute a criminal conspiracy under the laws of this State, an overt act in furtherance of the conspiracy ~~occurs within~~ has a territorial relationship to this State, and the object of the conspiracy is that a crime take place within this State;

17-A M.R.S.A. §7, sub-§1, ¶D, as enacted by 1975 Laws, c.499, §1 is amended to read:

D. Conduct ~~occurring within~~ having a territorial relationship to this State would constitute complicity in the commission of, or an attempt, solicitation or conspiracy to commit an offense in another jurisdiction which is also a crime under the law of this State;

17-A M.R.S.A. §7, sub-§3, first and second sentences, as enacted by 1975 Laws, c.499, §1 is amended to read:

3. When the crime is homocide, a person may be convicted under the laws of this State if either the death of the victim or the bodily impact causing death ~~occurred within~~ had a territiorial relationship to the State. If the location of the body of a homocide victim ~~is found within~~ has a territorial relationship to this State, it is presumed that such death or impact ~~occurred within~~ had a territorial relationship to the State.

17-A M.R.S.A. §7, sub-§4 is enacted to read:

4. Conduct or a result has a territorial relationship to this State if it either in fact occurred within the boundaries of this State or, in any instance in which it is not possible to determine whether it in fact occurred within or outside the boundaries of this State because a boundary cannot be precisely located or the location of any person cannot be precisely established in relation to a boundary, if the court determines that this State has a substantial interest in prohibiting the conduct or result. In determining whether this State has a substantial interest, the court shall consider the following factors:

A. The relationship to this State of the actor or actors and of persons affected by the conduct or result, whether as citizens, residents or visitors;

B. The location of the actor or actors and persons affected by the conduct or result prior to and after the conduct or result;

C. The place in which other crimes, if any, in the same criminal episode were committed;

D. The place in which the intent to commit the crime was formed.

Proof that the conduct or result in fact occurred outside the boundaries of this State shall mean that it shall be deemed to have occurred outside this State.

EXPLANATION

The intent of this amendment is to create a limited exception to territoriality as the sole basis of criminal jurisdiction. The requirement of State v. Baldwin and section 5(1) that jurisdiction must be proven beyond a reasonable doubt is retained, but territory as the basis of jurisdiction is departed from where the exact locus of a crime cannot be established and is replaced with "substantial state interest." This "interest" approach is similar to principles underlying long-arm statutes and conflicts of law in the civil area.

Under the tests proposed, the result in Baldwin (that four rape convictions were reversed because it could not be proven beyond a reasonable doubt that the crime occurred in Maine rather than New Hampshire) would be changed because both defendants and victim were from Maine, traveled from Maine and because the crime could also not be proven to have occurred in New Hampshire.

Maine has already departed further from territoriality as a basis for criminal jurisdiction than perhaps any other state. In State v. Haskell, 33 Me. 127 (1851) defendant was hired to convey goods from Maine to Boston. Somewhere along the way (it could not be proven where) he converted the goods. The delivery of the goods to defendant in Maine was considered a sufficient basis for jurisdiction, the Court stating that the defendant "shall be considered to have received the goods with a felonious intent."

More recently, in Skiriotes v. Florida, 313 U.S. 69 (1941) the Supreme Court upheld a statute (as applied to a Florida citizen) prohibiting the use of diving equipment for the taking of commercial sponges in "Gulf of Mexico" (non-Florida) waters.

ALTERNATIVE B [Up to sub§4 as in Alternative A]

4. Conduct or a result has a territorial relationship to this State if it either in fact occurred within the boundaries of this State or, in any instance in which it is not possible to determine whether it in fact occurred within or outside the boundaries of this State because a boundary cannot be precisely located or the location of any person cannot be established in relation to a boundary, if any four of the following factors are found by the court:

A. The actor or any one actor thereof was a citizen or resident of this State;

B. Any person affected by the conduct or result was a citizen or a resident of this State;

C. The actor or any one actor was in this State during a period immediately prior to the conduct or result;

D. Any person affected by the conduct or result was in this State during a period immediately prior to the conduct or result;

E. The actor or any one actor was in this State following the conduct or result;

F. Any person affected by the conduct or result was in this State following the conduct or result;

G. Another crime, if any, in the same criminal episode was committed in whole or in part in this State;

H. The intent or any actions amounting to an attempt, conspiracy or solicitation to commit the crime occurred within this State;

I. Actions in furtherance of preventing apprehension or prosecution, occurred by the actor or actors or others in this State;

COMMENT TO ALTERNATIVE B

The contact-counting approach of this alternative is more rigid than the alternative A. Only four factors are required because of proof of the last three, if they occurred at all, is likely to be difficult.

ALTERNATIVE C [Sub-§§ 1-3 as in Alternative A]

4. Conduct or a result has a territorial relationship to this State if it either in fact occurred within the boundaries of this State or in any instance in which it is not possible to determine whether it in fact occurred outside the boundaries of this State because a boundary cannot be precisely located or the location of any person cannot be established in relation to a boundary. Conduct or a result which in fact occurred outside the boundaries of this State has no territorial relationship to this State.

EXPLANATION

This alternative omits the interest factors, which may in any event be more appropriate in matters such as personal jurisdiction. It starts from the premise that criminal conduct should not go unpunished. In the narrow circumstances described, the inability to locate a border should not act as a shield. Where no other jurisdiction has an actual interest, Maine should assert jurisdiction.

[TO ALL THREE ALTERNATIVES]

1 M.R.S.A. §1, as enacted by is amended as follows:

The jurisdiction and sovereignty of the State extend to all such places within its boundaries, subject only to such rights of concurrent jurisdiction as are granted over places ceded by the State to the United States. This section shall not be construed to limit or restrict the jurisdiction of this State over any person or with respect to any subject within or without the State which jurisdiction is exercisable by reason of citizenship, residence or for any other reason recognized by law.

EXPLANATION

Although this very basic section would not act as a limitation on later-enacted and more specific provisions dealing with jurisdiction, it should be amended to conform with the above-proposed amendments, the long-arm statute, and the presently-existing 17-A M.R.S.A. §7. The language is taken from 1 M.R.S.A. §4, a provision enacted in 1959 to deal with territorial waters.

PROBLEM RE: §§12 and 1154

Justice Roberts has raised constitutional questions with respect to the above provisions. These questions both deal with the principle of the separation of powers between the judicial and executive branches.

Regarding §12 (De minimis infractions), the issue is the propriety of the court, on its own motion, dismissing a prosecution for the reasons stated in that section. The conflict centers on the respective roles of the judge and the prosecutor.

Regarding §1154 (Sentences in excess of one year deemed tentative), the question concerns the constitutionality of a revision of sentence by the court, after execution of sentence has commenced. Justice Roberts has suggested that this may be an encroachment on the exclusive power of the Governor to grant executive clemency. (It should be noted that the Department of Mental Health and Corrections has expressed reservations about the wisdom of this provision).

17-A M.R.S.A. §58-A, sub-§2, as enacted by P.L. 1975, c. 740, §25, is amended to read:

2. In a prosecution for a crime which may be committed recklessly or with criminal negligence, where such culpable state of mind is a necessary element, the existence of a reasonable doubt as to such states of mind may be established by evidence of intoxication if such intoxication is not self-induced.

17-A M.R.S.A. §108, sub-§1, ¶D, is enacted to read:

D. The force involved ~~was~~ is for the purpose of resisting an arrest which [is in fact lawful--whether lawful or unlawful] and which the actor knows is being made by a law enforcement officer, provided that the actor may use a reasonable degree of nondeadly force to resist excessive force in the course of the arrest.

PROBLEM RE: §352(1)

A question has been raised as to whether §352(1) (definition of property) includes customer lists and other forms of valuable commercial information which are not technical in character and bear no analogy to the invention or patent area of the law. A clearly related issue is whether such information, whether or not reduced to writing, should be included in the definition of property for purposes of the theft chapter.

Alternative 1

17-A M.R.S.A. &753, sub-§2, as enacted by PL 1975, c. 499, §1, is repealed and the following enacted in place thereof:

2. Hindering apprehension is a Class B crime if the defendant knew of conduct of the other person which has in fact resulted in a charge of criminal homicide in the first or 2nd degree or a Class A crime or which has in fact rendered the other person liable to such a charge. It is a Class C crime if the conduct of the other person has in fact resulted in a charge of criminal homicide in the first or 2nd degree or a Class A crime or has in fact rendered the other person liable to such a charge. Otherwise, it is one grade less than the charge in fact made or liable to be made against the other person; provided that if such charge is a Class E crime, hindering apprehension is a Class E crime.

Alternative 2

17-A M.R.S.A. &753, sub-§2, as enacted by PL 1975, c. 499, §1, is repealed and the following enacted in place thereof:

2. Hindering apprehension is a Class C crime if the charge in fact made or liable to be made against the other person was criminal homicide in the first or 2nd degree or a Class A or Class B crime. Otherwise, hindering apprehension is a Class E crime.

17-A M.R.S.A. §755, sub-§4, as enacted by PL 1975, c. 499, §1, is repealed and the following enacted in place thereof:

4. Escape is classified as:

A. A Class B crime if it is committed by force against a person, threat of such force, or while the defendant is armed with a dangerous weapon.

B. A Class D crime if the person escapes from arrest or escapes from custody while he is being transported to a jail, police station, or any other facility enumerated in subsection 3, pursuant to an arrest.

C. All other escape is a Class C crime.

17-A M.R.S.A. §901, sub-§4, as enacted by PL 1975, c. 499, §1, is amended to read:

4. Deceptive business practices is a Class ~~E~~ D crime.

ALTERNATIVE 1

17-A M.R.S.A. §1152, sub-§3, ¶A, as enacted by P.L. 1975, c. 499, §1, is amended to read:

A. A suspended fine with probation or an unconditional discharge as authorized by chapter 49;

17-A M.R.S.A. §1201, sub-§1, first sentence, as repealed and replaced by P.L. 1975, c. 740, §109, is amended to read:

1. A person who has been convicted of any crime may be sentenced to a suspended term of imprisonment with probation or, in the case of an organization, to a suspended fine with probation or to an unconditional discharge, unless:

ALTERNATIVE 2

17-A M.R.S.A. §1152, sub-§2, ¶A, as enacted by P.L. 1975, c. 499, §1, is amended to read:

A. A suspended ~~period~~ term of imprisonment or a suspended fine with probation as authorized by chapter 49.

17-A M.R.S.A. §1152, sub-§3, ¶A, as enacted by P.L. 1975, c. 499, §1, is amended to read:

A. A suspended fine with probation or an unconditional discharge as authorized by chapter 49;

17-A M.R.S.A. §1201, sub-§1, first sentence, as repealed and replaced by P.L. 1975, c. 740, §109, is amended to read:

1. A person who has been convicted of any crime may be sentenced to a suspended term of imprisonment or a suspended fine with probation or to an unconditional discharge, unless:

17-A M.R.S.A. §1201, sub-§1, ¶C, as repealed and replaced by P.L. 1975, c. 740, §109, is amended to read:

C. ~~The court finds that there~~ There is an undue risk that during the period of probation the convicted person would commit another crime; or

17-A M.R.S.A. §1201, sub-§1, ¶D, as enacted by P.L. 1975, c. 740, §109, is amended to read:

D. ~~The court finds that such~~ Such a sentence would diminish the gravity of the crime for which he was convicted.

17-A M.R.S.A. §1201, sub-§2, first sentence, as enacted by P.L. 1975, c. 499, §1, is repealed and the following enacted in place thereof:

If a convicted person is sentenced under this chapter, the court shall sentence the person to probation if he is in need of the supervision, guidance, assistance or direction that probation can provide.

COMMENT: The purpose of these amendments is to make it clear that probation is not mandated in the absence of a finding that one of the factors enumerated in subsection 1 exists. Probation or unconditional discharge still remains discretionary with the court.

17-A M.R.S.A. §1204, sub-§2, is enacted to read:

2. In every case in which a court imposes a sentence of probation, it shall be a condition of probation that the convicted person refrain from criminal conduct.

17-A M.R.S.A. §1204, sub-§2-A, ¶F, as repealed and replaced by P.L. 1975, c. 740, §110-A, is amended to read:

F. To refrain ~~from criminal conduct or~~ from frequenting unlawful places or consorting with specified persons;

Comments on Probation Amendments

The accompanying amendments were prompted by two requests from probation officers. These requests were: (1) To eliminate the requirement of a preliminary hearing when the person on probation is not arrested; and (2) To liberalize the time period within which the preliminary hearing must be held. Both requests appear to stem from the fact that limited resources make compliance with the above requirements very difficult, especially in rural areas.

In drafting the amendments, wer have made a number of other changes, all of which are listed below. It should be emphasized that, for the most part, the proposed changes are severable.

Changes effected by new §§1205 and 1205-A

1. Limit right to preliminary hearing to cases in which the person is arrested and not released on bail or afforded prompt court appearance.

2. Change 48 hour requirement for preliminary hearing to "without unnecessary delay."

3. Limit the scope of the preliminary hearing if alleged violation is conviction of new crime.

4. Eliminate prohibition against further proceedings when no probable cause is found.

5. Credit the person with tolled time if no violation is found.

Changes effected by new §1206

1. Clarify, and possibly broaden, the dispositions available when revocation stems from new criminal conduct. (For example, one District Court judge has interpreted §1206(4)(A)(2) to preclude prosecution when probation revoked for the criminal conduct. The amendments would eliminate that limitation, if it was in fact intended by the Code.)

2. Afford person on probation with credit toward sentence imposed for time incarcerated pending disposition of alleged violation. Similarly, afford credit for time served when concurrent sentence imposed for revocation of probation and new crime.

17-A M.R.S.A. §1205, as last amended by P.L. 1975, c. 740, §§111, 112, is repealed and the following enacted in place thereof:

§1205 Commencement of probation revocation proceedings

1. If a probation officer has probable cause to believe that a person under his supervision has violated a condition of his probation, he may arrest such person or he may deliver a summons to such person ordering him to appear for a court hearing on the alleged violation. If the probation officer cannot, with due diligence, locate the person in order to arrest him or serve a summons on him, he shall file a written notice of this fact with the court which placed the person on probation.

2. The summons delivered pursuant to subsection 1 shall include the signature of the probation officer, a brief statement of the alleged violation, the time and place of the alleged violation and the time, place and date the person is to appear in court. As soon as practicable after service of the summons, the probation officer shall file with the court a petition for revocation of probation, which shall set forth in detail the facts underlying the alleged violation. A copy of the petition shall be furnished to the person on probation prior to the court hearing on the alleged violation.

3. A person arrested pursuant to subsection 1 shall be afforded a preliminary hearing, in accordance with the procedures set forth in section 1205-A, unless

A. He is released on bail; or

B. He is afforded an opportunity for a court hearing on the alleged violation no later than 72 hours after his arrest.

If a person is arrested, but is not entitled to a preliminary hearing under this subsection, the probation officer shall file with the court a petition for revocation of probation, as described in subsection 2. A copy of the petition shall be furnished to the person on probation prior to the court hearing on the alleged violation.

4. The running of the period of probation shall be tolled upon either the delivery of the summons, the filing of the written notice with the court that the person cannot be located, or the arrest of the person, as provided for in subsection 1. If the person fails to appear in court after having been served with a summons, or if written notice is filed with the court that the person cannot be located, the court may issue a warrant for the arrest of the person. The court may then order the person committed with or without bail, pending the court hearing or pending a preliminary hearing, if the person is entitled to such a hearing under subsection 3. The running of the period of probation shall cease to be tolled upon a finding of no probable cause under ~~subsection 4 of~~ section 1205-A, or upon a disposition of the charges of probation violation pursuant to section 1206. If there is a finding of no probable cause, or if the person is found not to have violated his probation, the running of the period of probation shall be deemed not to have been tolled.

17-A M.R.S.A. §1205-A, is enacted to read:

§1205-A Preliminary hearing

1. Whenever it appears that a person arrested for an alleged violation of probation is entitled to a preliminary hearing under section 1205, the probation officer shall forthwith furnish the person with a written notice of a preliminary hearing to determine whether there is probable cause to believe that the person has violated a condition of his probation. The notice shall name the place and time of the preliminary hearing, state the conduct alleged to constitute the violation, and inform the person of his rights under this section.

2. The preliminary hearing shall be held before the district supervisor or such other official as may be designated by the Director of Probation and Parole. It shall be held without unnecessary delay at a location as near to the place where the violation is alleged to have taken place as is reasonable under the circumstances. If it is alleged that the person violated probation because of a conviction of a new offense, the preliminary hearing shall be limited to the issue of whether the person was convicted of the new offense.

3. At the preliminary hearing the person alleged to have violated a condition of his probation has the right to confront and cross-examine persons who have information to give against him, to present evidence on his own behalf, and to remain silent. If the district supervisor determines

on the basis of the evidence before him that there is not probable cause to believe that a condition of probation has been violated, he shall terminate the proceedings and order the person on probation forthwith released from any detention resulting from the alleged violation. If he determines that there is such probable cause, he shall prepare a written statement summarizing the evidence that was brought before him, and particularly describing that which supports the belief that there is probable cause. At the outset of the preliminary hearing, the district supervisor shall inform the person of his rights under this section and of the provisions of section 1206. Such person may waive, at the preliminary hearing, his right to confront and cross-examine witnesses against him, his right to present evidence on his own behalf, and his right to remain silent. No other rights may then be waived; nor shall there be a waiver of the right to a preliminary hearing.

4. If, as a result of a preliminary hearing held under this section, there is a determination of probable cause, the Director of Probation and Parole, or his designated representative, may file with any court a petition for revocation of probation. The petition shall incorporate the written statement prepared pursuant to subsection 3 and shall be accompanied by an application for a summons ordering the person to appear before the court for a hearing on the alleged violation. The petition and the application shall be filed without unnecessary delay. A copy of the petition shall be furnished to the person on probation.

17-A M.R.S.A. §1206, as last amended by P.L. 1975, c. 740, §113, is repealed and the following enacted in place thereof:

1. Upon receipt of a petition for revocation of probation, pursuant to section 1205 or 1205-A, the court may, in its discretion:

A. Order a hearing on the allegations; or

B. Dismiss the petition, if, after opportunity for amendment, it finds that the conduct alleged does not constitute a violation of the conditions of probation, and order the person on probation released forthwith if he is being detained on the allegations.

2. The hearing to revoke probation shall be held in the court which sentenced the person to probation in either the county or division in which the person resides or is incarcerated, unless the court orders otherwise for the convenience of witnesses.

3. If a hearing is ordered, the person on probation shall be notified, and the court, including the court to which the proceedings may have been transferred, may issue a summons or may issue a warrant for his arrest and order him committed, with or without bail, pending the hearing.

4. If a hearing is held, the person on probation shall be afforded the opportunity to confront and cross-examine witnesses against him, to present evidence on his own behalf, and to be represented by counsel. If he cannot afford counsel, the court shall appoint counsel for him.

5. When the alleged violation constitues a crime for which the person on probation has not been convicted, the court may revoke probation if it finds by a preponderance of the evidence that the person on probation committed the crime. If the person is subsequently convicted of the crime, or any other crime or crimes arising out of the same conduct, sentencing shall be subject to the requirements of chapter 45, section 1155.

6. If the alleged violation does not constitute a crime and the court finds by a preponderance of the evidence that the person has inexcusably failed to comply with a requirement imposed as a condition of probation, it may revoke probation. In such case, the court shall impose the sentence of imprisonment that was suspended when probation was granted.

7. If a person on probation is convicted of a new crime during the period of probation, the court may sentence him for such crime, revoke probation and impose the sentence of imprisonment that was suspended when probation was granted, subject to chapter 47, section 1155. If the person has been sentenced for the new crime, and probation revocation proceedings are subsequently commenced, the court, which conducts the revocation hearing, may revoke probation and impose the sentence of imprisonment that was suspended when probation was granted, subject to chapter 47, section 1155.

8. Whenever a person is detained, in any state or county institution, pending a probation revocation proceeding, such period of detention shall be deducted from the time the person is required to serve under the sentence imposed as a result of the probation revocation. Whenever a person is required to serve concurrent terms of imprisonment under subsection 5 or subsection 7, and the terms do not in fact commence on the same date, any time which the person has served under the prior ~~time~~ term shall be deducted from the time he is required to serve under the subsequent term.

Submitted to Legislature by Prosecutors' Association

STATE OF MAINE
108th LEGISLATURE

AN ACT RELATING TO THE POSSESSION OF FIREARMS BY FELONS

Sec. 1. T.15 R.S. §393; Section 393, R.S., T.15 is repealed and the following enacted in place thereof:

§393 Possession Forbidden

1. It shall be unlawful for any person who has been convicted of any crime which is punishable by one year or more imprisonment or any other crime which was committed with a firearm or dangerous or deadly weapon under the laws of the United States or of the State of Maine, or of any other state, to own, have in his possession or under his control any firearm.

2. Any person subject to the provisions of paragraph 1 of this section may, after the expiration of five years from the date of his discharge or release from prison or jail or termination of probation apply in writing to the Commissioner of Public Safety for the State of Maine, upon forms supplied by him, for a permit to carry a firearm not to be concealed upon the person.

3. The written application shall specify the applicant's full name; all alias'; date and place of birth; place of legal residence; occupation; make, model and serial number of the firearm sought to be possessed; date, place and nature of conviction; sentence imposed; place of incarceration and/or name and address of probation or parole officer; date of discharge or release from prison or jail or termination of probation; the reason for the request and any other information deemed by the Commissioner of Public Safety to be of assistance to him. The application shall be accompanied by certified or attested copies of the indictment, information or complaint, judgment and commitment and discharge which are the subject of the conviction.

4. Upon receipt of an application, the Commissioner of Public Safety shall determine if it is in proper form. If the application is proper he shall within 30 days notify the sentencing judge, the attorney general, the district attorney in the county where the applicant resides, the district attorney who

prosecuted the case, the law enforcement agency which handled the case, the chief of police and sheriff in the municipality and county where the crime occurred and his present residence, of the filing of the application and may direct any appropriate investigation to be carried out. If, within 30 days of receipt of notice, any person so notified objects in writing to the issuance of a permit, none shall issue but the said commissioner shall provide the applicant a hearing upon the filing of any objection and any denial shall be in writing.

5. Any person to whom a permit has been denied may appeal to the Superior Court sitting in Kennebec County. The decision of the said commissioner may not be overturned unless the court shall find that the applicant's request is reasonable and that the denial of the commissioner was arbitrary, capricious and discriminatory.

6. The said commissioner may establish a reasonable filing fee not to exceed $25.00 to defray costs of processing applications.

7. As used in this section, firearm, deadly weapon, or dangerous weapon, have the same meaning as is defined in Title 17-A.

8. Any violation of paragraph 2 of this section is a Class B offense and shall be punished as provided for in Title 17-A.

STATEMENT OF FACT

The purpose of this Act is to prohibit the possession of firearms by persons who have been convicted of violent or serious crimes.

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Submitted to Legislature by Prosecutors' association

STATE OF MAINE
108th LEGISLATURE, 1977

AN ACT AMENDING THE PROCEDURE FOR CHARGING PRIOR OFFENSES

Sec. 1. T.15 M.R.S. §757: Section 757, R.S., T.15 is amended as follows:

1. In all cases where a prior conviction for an identical offense or any other offense affects the sentence which a court may impose in a current principal offense, such prior conviction shall not be alleged in the same count in the complaint, information or indictment alleging such principal offense, but ~~shall~~ may be alledged in a separate count contained in the complaint, information or indictment, ancillary to the principal offense, upon which the respondent shall not be ~~arraigned~~ tried until such time as the respondent has been convicted of the principal offense.

Sec. 2. T.15 M.R.S. §757: Section 757, R.S., T.15 is amended by enacting and adding thereto two new paragraphs as follows:

2. Upon a conviction on the principal offense, the defendant shall, unless he admits to the allegations, then be tried upon any ancillary matters affecting sentence before the same finders of fact.

3. The State may establish a prima facie case on any ancillary matters affecting sentence upon allegation and proof that the name and date of birth of the person named in the principal offense is the same as in the alleged prior offense.

STATEMENT OF FACT

The purpose of this Act is to provide that prior convictions affecting sentence may be alleged in the same charging document as the principal offense and to clearly specify the proof needed to obtain a conviction and judgment for the purpose of sentence.

15 M.R.S.A. §2141, first ¶, first sentence, as enacted by P.L. 1965, c. 419, §1, is amended to read:

There shall be an appellate division of the Supreme Judicial Court for the review of sentences ~~to the State Prison~~ of imprisonment for a term of one year or more imposed by final judgments in criminal cases, except in any case in which a different sentence could not have been imposed.

15 M.R.S.A. §2142, first ¶, 2nd sentence, as enacted by P.L. 1965, c. 419, §1, is amended to read:

Upon the imposition of ~~such~~ a sentence ~~to the State Prison~~ of imprisonment for a term of one year or more, the clerk of the court shall notify the person sentenced of his right to request such appeal.

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Submitted to Legislature by Prosecutors Association

STATE OF MAINE
108th LEGISLATURE, 1977

RESOLUTION, PROPOSING AN AMENDMENT TO THE CONSTITUTION ALLOWING CERTAIN CRIMES TO BE PROSECUTED BY INFORMATION.

Sec. 1. Maine Constitution, Art. 1, §7: The first sentence of Article 1, Section 7 of the Maine Constitution is amended as follows:

Section 7. No person shall be held to answer for ~~a capital or infamous crime~~ any homicide in the first or second degree or for any class A, B or C crime, unless on a presentment or indictment of a grand jury, except in cases of impeachment or class A, B or C crimes where probable cause has been found by a court of competent jurisdiction and for which the Supreme Judicial Court has by rule provided for prosecution by information, or in such cases of offenses, which are usually cognizable by a justice of the peace, or in cases arising in the army or navy, or in the militia when in actual service in time of war or public danger.

STATEMENT OF FACT

The purpose of this amendment is to align the Maine Constitution with the new criminal code and to permit the filing of an information by the prosecutor after a finding of probable cause to shorten the time between arrest and trial.

Report of Criminal Law Advisory Commission

Meeting of December 5, 1977

Attendees

Members: Peter Ballou, Richard Cohen
Consultants: Justice Edward Godfrey, Justice Louis Scolnik, Justice Elmer Violette, Senator Samuel Collins
Other: Stephen L. Diamond, Tom Masland

Business

Despite the obvious lack of a quorum, we proceeded with business since the Legislative Research Office had requested that the initial draft of our bill be submitted by December 9. Accordingly, we decided to accept amendments on a conditional basis if the two members concurred with the amendment and there were no strong objections from the consultants. Although the enclosed drafts will be submitted to the Legislative Research Office for inclusion in the Code bill, it is understood that they may be reconsidered at any time by the Commission.

Regarding the enclosed drafts, the major discussion concerned the amendment to §17. Two representatives from police departments explained why they felt the amendment was necessary. Justice Godfrey expressed some reservations about §17 in general, insofar as it entails using the criminal law and criminal sanctions to enforce civil violations.

The meeting also gave tentative approval to the proposed change in the definition of a "firearm," with instructions that I examine the matter further. Having made some additional inquiries, I am concerned that the proposed definition may be too broad. Accordingly, I am not including that amendment in the original bill.

Senator Collins requested that the Commission incorporate into the Code bill certain amendments to the Criminal Extradition Act, which were drafted by Peter Ballou and Asst. Attorney General Bill Stokes. It was agreed that these amendments should be included, subject to approval or disapproval by the Commission at a later date.

Enclosed are the drafts being submitted to the Legislative Research Office. I anticipate one more meeting to finalize the bill.

Stephen L. Diamond
Assistant Attorney General

SD:ld
enc.

17-A M.R.S.A. §59, sub-§2, ¶B, as enacted by P.L. 1975, c. 499, §1, is repealed and the following enacted in place thereof:

B. Evidence of mental disease or defect, as defined in section 58, subsection 2, shall not be admissible in the guilt or innocence phase of the trial for the purpose of establishing the defense of a lack of criminal responsibility, as defined in section 58, subsection 1. Such evidence shall be admissible for that purpose only in the 2nd phase following a verdict of guilty.

17-A M.R.S.A. §210, sub-§1, as enacted by P.L. 1975, c. 499, §1, is amended to read:

1. A person is guilty of terrorizing if he communicates to any person a threat to commit or to cause to be committed a crime of violence dangerous to human life, against the person to whom the communication is made ~~threatened~~ or another, and the natural and probable consequence of such a threat, whether or not such consequence in fact occurs, is:

17-A M.R.S.A. §210, sub-§1, ¶A, as enacted by P.L. 1975, c. 499, §1, is amended to read:

A. To place the person to whom the threat is communicated or the person threatened in reasonable fear that the crime will be committed; or

17-A M.R.S.A. §361, sub-§3, as enacted by P.L. 1975, c. 499, §1, is amended to read:

3. Proof that the defendant concealed unpurchased property stored, offered or exposed for sale while he was still on the premises of the place where it was stored, offered or exposed, or in a parking lot or public or private way immediately adjacent thereto shall give rise to a presumption that the defendant obtained or exercised unauthorized control over the property with the intent to deprive the owner thereof.

17-A M.R.S.A. §1204, sub-§1, as enacted by P.L. 1975, c. 499, §1, is amended to read:

1. If the court imposes a suspended sentence of imprisonment with probation or a suspended fine with probation, it shall attach such conditions of probation, as authorized by this section, as it deems to be reasonable and appropriate to assist the convicted person to lead a law-abiding life~~.~~, provided that in every case it shall be a condition of probation that the convicted person refrain from criminal conduct.

17-A M.R.S.A. §1204, sub-§2-A, ¶F, as enacted by P.L. 1975, c. 740, §110-A, is amended to read:

F. To refrain ~~from criminal conduct or~~ from frequenting ~~unlawful~~ specified places or consorting with specified persons;

TO: All Assistant Attorneys General

FROM: Stephen L. Diamond

RE: Conversion of Crimes Outside the Criminal Code

The Criminal Law Advisory Commission intends to recommend to the Judiciary Committee that §4-A of the Criminal Code (Title 17-A of the Revised Statutes) become effective October 1, 1977, as the section presently provides. Section 4-A will affect crimes defined outside of the Code in the following manner:

1. Those crimes which are expressly designated as Class A, Class B, Class C, Class D or Class E crimes will retain their present sentencing classifications.

2. Those crimes which are not given a Code sentencing class, but which are punishable by imprisonment, will be converted into one of the Code's sentencing classes, in accordance with §4-A (3).

3. Those crimes which are not punishable by imprisonment will be converted into civil violations, in accordance with §4-A(4).

The Commission also plans to recommend that 17-A M.R.S.A. §1301(1) be amended so that the maximum fines for Class C, Class D and Class E crimes committed by natural persons will be changed in the manner indicated below.

Sentencing Class	Proposed Maximum Fine
C	$2500
D	$1000
E	$ 500

In light of these developments, you may wish to review the criminal statutes within the jurisdiction of the agencies you represent. Should you determine that any of those statutes will be changed in an unacceptable manner by §4-A, necessary amendments should be prepared this session, in the event that the Legislature follows the recommendations of the Commission.

I would be happy to explain in more detail the Code's conversion scheme and sentencing provisions. In

addition, I shall be available to lend whatever assistance I can in drafting necessary amendments. For the most part, problems can probably be best resolved by expressly assigning a Code sentencing class to crimes defined in other Titles. This procedure is specifically authorized by 17-A M.R.S.A. §4(2).

CONVERSION PROBLEMS

I. Conversion to Class Crimes

Since conversion depends entirely upon the present imprisonment penalty, the major problem arises with respect to statutes which carry relatively low imprisonment penalties and relatively high fines. Under the Code's classification scheme, the alternatives would be to lower the fines below the amounts currently imposed or to elevate the offenses to unwarranted levels of seriousness.

Another problem is the effect of conversion on fines which are geared to the number of violations. Such penalties are not uncommon in the laws which regulate natural resources and are often favored by the agencies responsible for this enforcement.

II. Conversion to Civil Violations

A. Procedural Ramifications

One concern over the conversion to civil violations stems from the loss of arrest authority (and for some agencies the concomitant authority to accept a bond). This problem would be most severe with regard to laws frequently violated by nonresidents in rural areas. A related concern centers on the possible consequences of the loss of the power to seize evidence.

At the other end of the spectrum, there is some doubt as to the adequacy of the enforcement procedures set out in §17 for certain civil violations created by conversion. Section 17 contemplates the initiation of the civil violation proceeding by the personal service of a simple citation similar to the Uniform Traffic Ticket. Whether that procedure would be suitable for complex civil violations, such as those in the environmental area, is open to question.

B. Legislative Intent

The comment of the Criminal Law Revision Commission to §4 explains the civil violation concept as follows: "It accomplishes the moving out of the criminal law those things which are of minimal seriousness." The premise of the conversion scheme seems to be that if the Legislature did not attach a term of imprisonment to a crime, it considered it to be of minimal seriousness. This is a debatable assumption, especially since there are fine only statutes which carry penalties as high as $25,000.

C. Constitutional Issues

It has been argued that, unless it is carefully used,

the civil penalty approach may be found to be an unconstitutional attempt to deprive the accused of the rights which attach to a criminal prosecution. See Charney, The Need for Constitutional Protections for Defendants in Civil Penalty Cases, 59 Cornell L. Rev. 478 (1974). This factor merits consideration with respect to the types of conduct which should be treated as civil violations and the range of penalties which should be applied.

D. Penalties for Organizations

The conversion of a crime to a civil violation deprives the court of the unique sanctions provided by the Code for organizations in §1153. In addition, it eliminates the difference in the fines for organizations and natural persons. The presence or absence of a criminal record may also affect the organization's ability to procure or retain an occupational license.

III. Conflict With The Views of State Agencies

A preliminary review of the recommendations submitted last year by certain State agencies indicates that the results of conversion will conflict with the classification desired by the agency in a substantial number of cases (the rate of conflict may be greater than 50%). The Commission should decide how to deal with these conflicts.

IV. Applicability of Conversion

There is considerable confusion as to whether conversion would apply to municipal ordinances. If conversion takes effect, the Code should specifically address the issue.

SD:ks

STATE OF MAINE

Inter-Departmental Memorandum Date December 3, 1979

To Criminal Code Advisory Commission Members and Consultants Dept.

From Michael E. Saucier, Ass't A.G. Dept. Attorney General

Subject Mel Zarr Redraft of Bindover Law

The following is Mel Zarr's suggestion for a bindover statute in light of the staff redraft appearing on pages 77 & 78 of the Commission packet.

15 MRSA §3101, sub-§4, ¶D is amended to read:

D. Factors. The juvenile court shall consider the following factors in deciding whether to bind a juvenile over to Superior Court.

(1) Seriousness of the crime. The nature and seriousness of the crime, with particular emphasis on whether there was a violent crime against the person; and

(2) Characteristics of the juvenile. The juvenile record, history, attitude and pattern of living and other factors relevant to whether the juvenile will be deterred from future criminal conduct; and

(3) Dispositional Alternatives. The dispositional alternatives available to the juvenile court.

15 MRSA §3101, sub-§4 ¶E is amended to read:

E. The juvenile court shall bind a juvenile over to the Superior Court if it finds:

(1) that there is probable cause to believe that a juvenile crime has been committed that would constitute murder or a Class A,B, or C crime if the juvenile involved were an adult and that the juvenile to be bound over committed it;

(2) By a preponderance of the evidence that in considering the seriousness of the crime, the character of the juvenile, and dispositional alternatives available to the juvenile court that the protection of the community requires that the juvenile be prosecuted as an adult.

STATE OF MAINE
DISTRICT COURT
DIVISION OF SOMERSET
SKOWHEGAN, MAINE 04976

John W. Benoit, Jr.
Judge

November 30, 1979

Hon. Richard Cohen
Attorney General, State of Maine
State House
Augusta, Maine 04333

Dear Mr. Attorney General:

I ask your consideration concerning two changes in statutes, as follows:

1. Juvenile Code: Although O.U.I. is a juvenile offense, the sentencing provisions of the Code do not authorize a judge to suspend the juvenile's driver's license. Neither do the motor vehicle statutes grant any such authority in juvenile cases. My suggestion is to add the following language to 15 M.R.S.A. § 3314:

> "J. The court may suspend the juvenile's driver's license."

2. Drinking intoxicating liquor in a motor vehicle (17 M.R.S.A. § 2003, (1)):
At present, the above statute is a civil violation calling for a fine of up to $50. However, mere possession of intoxicating liquor, under 28 M.R.S.A. § 303 is a misdemeanor calling for a fine up to $100 (first offense). Anyone aware of the difference in penalty would be motivated to drink the liquor to obtain the lesser fine; yet consumption, in my opinion, is a more serious matter than the possession. The provisions of 17 M.R.S.A. § 2003 (1) have been on the books since 1947 sans amendment of penalty; it should be made a misdemeanor to bring it in line with the reference possession statute.

Trusting you are in good health.

Respectfully yours,

JWB/r
Copy to Governor Joseph Brennan.

15 MRSA§709 sub §4 §C enacted by 1973 c. 561 is amended to read:

c. A person given prior authority by such sender or receiver.

15 MRSA §712 2nd ¶ as amended by 1973 c.788 c.61 is repealed.

COMMENT

The interaction of these two provision has caused confusion since their enactment. On one hand, in §709, recording or transmitting of a conversation is not considered an "interception". The provision follows constitutional decisionsunder the 4th amendment of the U.S. Constitution, and federal statute. See Lee v. United States, 343 U.S. 744 (1952);

United States v. White 401 U.S. 745 (1971); 18 U.S.C. §2511(2)(c)(d). This view is premised on the fact that because a party to a conversation may always repeat the contents of the conversation to another person, the other party has no reasonable expectation of privacy and that transmission or recording is only a small step beyond repeating the communication. Section 712, however, appears to define the very same conduct as an interception, states that when done under "color of law" it is not a "violation, but then, purports to create an exclusionary rule for "such interception" (assuming it is an interception).

The repeal of the whole paragraph eliminates both the confusion and, if it exists, the exclusionary rule under the view that the constitutional rule is the better one. The Law Court has consistently refrained from creating an exclusionary rule under the Maine Constitution and, except for very limited exclusionary rules contained in 17-A M.R.S.A. §4(3)(civil violation of possession of marijuana) and

29 M.R.S.A. §1312 (operating under influence; failure to properly explain consequences of refusal), it does not appear to have any exclusionary rules.

15 MRSA §2115-A, sub §6, as enacted by P.L. 1979 c.343 is amended to read:

6. Liberal construction. The provision of this section shall be liberally construed to effectuate its ~~purpose, or~~ purposes.~~of insuring that the State is able to proceed to trial with all the evidence it is legally entitled to introduce, in view of the limited ability of the State to have error reviewed after trial.~~

15 MRSA 3203 sub §1 as last amended 1977 c. 664 §13, further amended

1. Notification of intake worker. When, in the judgment of a law enforcement officer, juvenile court proceedings should be commenced against a juvenile ~~or~~ and a juvenile should be detained prior to his initial appearance in juvenile court except ~~in cases under Title 5, section 200-A~~ when the juvenile is charged with murder, the law enforcement officer shall immediately notify an intake worker. A juvenile charged with murder shall be detained for proceedings under subsection 5.

COMMENT

This section in general governs detention and not the decision to prosecute. Thus, reference to an intake worker of a juvenile whom a police officer believes should be prosecuted but not detained is best left to section 3301, which is also amended.

The original exemption of cases under 5 MRSA §200-A included all cases prosecuted by the Attorney General. Except for murder, there is no policy basis for different detention or intake treatment as a result of who may be the prosecutor.

15 MRSA§3203, sub §5, ¶ A as enacted by P.L. 1977, c.520, §1, is amended to read:

A. Upon petition by the intake worker, or when the juvenile is charged with murder, the juvenile court shall review the decision to detain a juvenile within the time limits stated in subsection 2, paragraph A.

COMMENT

Despite the exemption from the intake process in subsection 1 of juvenile charged with murder, it is still necessary to deal with such a juvenile's further possible detention. The time limits which the officer or intake must inform the juvenile are here actually imposed on the court.

15 MRSA 3203, sub 5, ¶C, as enacted by P.L. 1977, c.664, §17, is read:

ALTERNATIVE 1;

no amendment

COMMENT

All juveniles, including those charged with murder, are detained or not, in accordance with subsection 4.

ALTERNATIVE 2:

C. Following a detention hearing, a court shall order the release of a juvenile ~~is release;~~ charged with an offense other than murder in accordance with subsection 4, unless it finds by a preponderance of the evidence, that continued detention is necessary to meet one of the purposes of detention provided in that subsection. The juvenile court shall ensure, by appropriate order, that any such continued detention is otherwise in accordance with the requirements of subsection 4. In the case of a juvenile charged with murder, release or detention shall be determined in the same manner and according to the same standards as in the case of an adult charged with murder.

COMMENT

A juvenile charged with murder will, under this amendment, be subject to detention under adult standards even before a bind-over and/or indictment. See Me. Const. Art.I §10; M.R.Crim.P. 46(a).

15 MRSA 3301 sub §1 1st sentence is amended to read:

1. Preliminary Examination. When a juvenile ~~accused of having committed a juvenile crime is referred~~ has been arrested or when a law enforcement officer or other person believes that

a juvenile has committed a juvenile crime and that referral to an intake worker is appropriate, ~~the~~ an intake worker shall, except ~~in cases in which an investigation is conducted pursuant to Title 5 section 200-A~~ when the charge is murder, conduct a preliminary investigation to determine whether the interests of the of the juvenile of the community require that further action be taken. On the basis of the preliminary investigation, the intake worker shall: ...

COMMENT

See note to 1980 amendment to section 3203, subsection 1. Similar policy reasons would seem to apply to the prosecution decision under this section as apply to the detention decision.

15 MRSA §3308 sub §8 hereby enacted

8. Applicability of Criminal History Records Information Act. To the extent not inconsistent with this section, the Criminal History Records Act, 16 MRSA §§ shall apply to records created or maintained under this Part or under former sections of Title 15.

17-A MRSA §1205, sub §1, as enacted by P.L 1977. c.510, §71, is amended by adding a newsentence following the first sentence.

If ~~such person~~ the person on probation is arrested pursuant to this subsection, ~~release on bail shall be determined only by the court and in accordance with subsection-3.~~ the question of release shall be determined by the court, which may ~~order the person committed with~~ set bail or other release conditions or order the person committed without bail pending the court hearing or pending a preliminary hearing, if the person is entitled to a preliminary hearing under subsection 4.

17- MRSA §1205, sub §3, 2nd sent. as enacted by 1977 c.510 §71, amended to read:

The court may ~~then~~ set bail or other release conditions or may order the person committed ~~with or~~ without bail, pending the court hearing or pending a preliminary hearing, if the person is entitled to such a hearing under subsection 4.

COMMENT

These two amendments (to subsections 1 and 3) are intended to clarify questions concerning bail pending hearings and who may set it.

17-A MRSA §1205, sub-§7 as enacted by P.L. 1977 c. 510, §71 is amended to read:

7. The running of the period of probation shall be tolled upon either the delivery of the summons, the filing of the written notice with the court that the person cannot be located, or the arrest of the person, as provided for in subsection 1. The running of the period of probation shall ~~cease to be tolled~~ resume upon a finding of no probable cause under section 1205-A, subsection 4, ~~or upon a disposition of the charges of probation violation~~ if pursuant to section 1206, the court does not revoke probation. If there is a finding of no probable cause, or if the ~~person is found not to have violated his~~ court does not revoke probation, the running of the period of probation shall be deemed not to have been tolled.

COMMENT

These changes are intended to clarify language and when probation tolled and when tolling ceases. The court under section 1206 may find a violation but not revoke, Non-revocation is therefore the event which should trigger the provisions of these two sentences.

17-A MRSA §1252, sub §5, as enacted by P.L. 1975 c.740 §118-A is amended to read:

5. Notwithstanding any other provision of this code, if the State pleads and proves that a Class A, B or C ~~or B~~ crime was committed with the use of a firearm against a person, the minimum sentence of imprisonment, which shall not be suspended, shall be as follows: When the sentencing class for such crime is Class A, the minimum term of imprisonment shall be 4 years, when the sentencing class for such crime is Class B, the minimum term of imprisonment shall be 2 years and when the sentencing class for such crime is Class C, the minimum term of imprisonment shall be one year. For purposes of this subsection, the applicable sentencing class shall be determined in accordance with subsection 4.

COMMENT

This is a technical, conforming amendment. No mandatory sentence is provided for a Class D offense committed with a firearm in the latter portion of this subsection.

17-A MRSA §1253 sub §1-A is hereby enacted:

1-A. A person who has been previously sentenced in another jurisdiction who has not commenced or completed that sentence may be sentenced to a term of imprisonment in Maine which the court, subject to the provisions of section 1155, may order the Department or the Sheriff to run concurrently from the date of sentencing although the person is incarcerated in an institution of the other jurisdiction. In the absence of an order requiring concurrent sentences, any sentence of imprisonment in Maine shall commence as provided in subsection 1 and shall run consecutively to the sentence of the other jurisdiction.

COMMENT

At present there is no authority to allow a Maine sentence to be served concurrently while a person is serving a sentence in another jurisdiction. The question of whether another jurisdiction can or will run its sentence concurrently while the prisoner is in Maine serving a Maine sentence is properly left to those other jurisdictions.

STATE OF MAINE

Inter-Departmental Memorandum Date December 6, 1979

To CRIMINAL LAW ADVISORY COMMISSION MEMBERS AND CONSULTANTS Dept.

From Michael E. Saucier, Ass't A.G. Dept. Attorney General

Subject Report of December 4, meeting

Attendees: Peter Ballou, Joe Jabar, Peter Goranites, Ellerbe Cole, Mike Saucier (Martha Harris by letter dated December 3, 1979)

Action on drafts:

1. page 44: a general discussion of the privilege problem occurred; in addition to the alternatives already proposed, another alternative was suggested: no use of statements made to intake workers at the adjudication stage and only for purpose of impeachment at other hearings.

   Peter Goranites was undecided on which alternative he preferred.

2. page 46: Adopted

3. page 47: Adopted

4. pages 50-51: Tabled after brief discussion; Peter Ballou and Joe Jabar favored the draft on page 50 for reasons stated in the Comment. Peter Goranites was opposed to an amendment because there appeared to be no specific problems created by the present language. Martha Harris was opposed to changing the policy that lesser offenses be tried out of the public view.

5. page 52: Adopted. It was decided that the last sentence of the comment be stricken.

6. page 53: sub-§3 amendment: Redraft adopted; see page 114.

   Sub-§3-A enactment: adopted; Martha Harris dissented on the grounds that opening records to victims is inappropriate.

7. page 54: Adopted.

8. page 55: Tabled after a general discussion. Martha Harris believed the courts should retain present flexibility. The members present favored the amendment for reasons expressed in the Comment.

9. pages 56-69: No action taken.

10. page 70 (Senator Collins letter regarding sex offender sentencing alternatives): after brief discussion members present adopted a limited staff study proposal. Staff directed to: 1) prepare a memorandum regarding the constitutionality of voluntary and involuntary hormone treatment; 2) seek opinions of local medical professional on the validity of such treatment . Staff work is to begin after the 2nd Regular Session and should be aided by MCJP&AA technical assistance.

11. page 71-74: No action taken.

12. page 76: Redraft of §3003 approved; Redraft of §3101(4) adopted as modified; see page 114.

13. page 77 and 99: Redrafted see page 114-115.

14. page 79-81: redraft approved.

15. page 82: Redraft of both §3203 (5A) and §3310 approved with modifications, see page 115.

16. page 83-98: No action taken.

17. page 100 (letter from Judge Benoit):

    a. The Juvenile Code amendment; the members present believed it to be too broad but directed the staff to draft language to give the juvenile court the same authority now exercised in the District Court for license suspensions of adults in offenses involving motor vehicles.

    b. drinking in a motor vehicle: the members present felt it was inappropriate for the Commission to address the matter because the 109th Legislature, in the 1st regular session was split on the merits of a similar proposal, see L.D. 709 and CA H-489.

REDRAFT - PAGE 53

15 MRSA §3308, sub-§2 as enacted by P.L. 1977 c.520, §1 is amended to read:

2. Hearings open to public. In the case of a hearing open to the public under section 3307 the petition, the record of the hearing and order of adjudication shall be open to public inspection, provided that any court subsequently sentencing the juvenile after he has become an adult may consider only murder and Class A-C offenses committed by the juvenile.

REDRAFT - PAGE 76

15 MRSA §3101 sub-§4, ¶B as enacted by P.L. 1977, c.520, §1 is amended by adding the following paragraphs:

The Maine Rules of Evidence shall apply only to the probable cause portion of the bind-over hearing.

For the purpose of making the findings required by paragraph E, sub-paragraphs 1 and 2, written reports and other material may be received by the court along with other evidence, but the court, if so requested by the juvenile, his parent or guardian or other party, shall require that the person who wrote the report or prepared the material to appear as witnesses and be subject to examination and the court may require that the persons whose statements appear in the report appear as a witness and be subject to examination.

REDRAFT - PAGES 77-78 & 99

15 MRSA §3101 sub-§4, ¶D as enacted by P.L. 1977 c.520, §1 is repealed and replaced as follows:

D. Factors. The juvenile court shall consider the following factors in deciding whether to bind a juvenile over to Superior Court:

(1) Seriousness of the crime: the nature and seriousness of the offense, greater weight being given to offenses against the person than against property; whether the offense was committed in an aggressive, violent, premeditated or willful manner;

(2) Characteristics of the juvenile: the record and previous history of the juvenile; his emotional attitude and pattern of living; other factors relevant to whether the juvenile will be deterred from future conduct;

(3) Dispositional alternatives: whether future criminal conduct by the juvenile will be deterred by the dispositional alternatives available to the juvenile court; whether the dispositional alternatives available to the juvenile court would diminish the gravity of the offense; whether the protection of the community requires commitment of the juvenile to a facility which is more secure than those available as dispositional alternatives to the juvenile court;

15 MRSA §3101, sub-§4 ¶E as amended by P.L. 1977, c.664 §7-9 is repealed and replaced as follows:

E. The juvenile court shall bind a juvenile over to the Superior Court if, it finds:

(1) that there is probable cause to believe that a juvenile crime has been committed that would constitute murder or a Class A, B, or C crime if the juvenile involved were an adult and that the juvenile to be bound over committed it;

(2) By a preponderance of the evidence that after a consideration of the factors specified in paragraph D, there exists a lack of appropriate dispositional alternatives available to the juvenile court, and that the juvenile would be more appropriately prosecuted as if he were an adult.

REDRAFT OF PAGE 82

15 MRSA §3310, sub-§1 as enacted by P.L. 1977, c.520, §1 amended to read:

1. Evidence ~~to be heard~~ and factfinding. ~~At the adjudicatory hearing evidence will be heard pursuant to the~~ The Maine Rules of evidence shall apply in the adjudicatory hearing. There shall be no jury.

TABLE OF CONTENTS (Continued)

17-A M.R.S.A. §1205, as last amended by P.L. 1975, c. 740, §§111, 112, is repealed and the following enacted in place thereof:

§1205 Commencement of probation revocation proceedings

1. If a probation officer has probable cause to believe that a person under his supervision has violated a condition of his probation, he may arrest such person or he may deliver a summons to such person ordering him to appear for a court hearing on the alleged violation. If the probation officer cannot, with due diligence, locate the person in order to arrest him or serve a summons on him, he shall file a written notice of this fact with the court which placed the person on probation.

2. The summons delivered pursuant to subsection 1 shall include the signature of the probation officer, a brief statement of the alleged violation, the time and place of the alleged violation and the time, place and date the person is to appear in court. As soon as practicable after service of the summons, the probation officer shall file with the court a petition for revocation of probation, which shall set forth in detail the facts underlying the alleged violation. A copy of the petition shall be furnished to the person on probation prior to the court hearing on the alleged violation.

3. If the person fails to appear in court after having been served with a summons, or if written notice is filed with the court that the person cannot be located, the court

from old sub-§ 4; see new sub-§ 7.

may issue a warrant for the arrest of the person. The court may then order the person committed with or wothout bail, pending the court hearing or pending a preliminary hearing, if the person is entitled to such a hearing under subsection 5.

New

4. If a person on probation is charged with or convicted of a new offense and is incarcerated as a result of the pending charge or conviction a petition for revocation as described in subsection 2 may be filed with the court. Upon filing of the petition, the court may order the person comitted with or without bail, pending the court hearing or pending the preliminary hearing, if the person is entitled to such a hearing under subsection 5.

old sub-§ 3

5. A person arrested pursuant to subsections 1 or 3 shall be afforded a preliminary hearing, in accordance with the procedures set forth in section 1205-A, unless

A. He is released on bail on the alleged violation; or

B. He is afforded an opportunity for a court hearing on the alleged violation no later than 72 hours after his arrest.

If a person is arrested pursuant to subsections 1 or 3, but is not entitled to a preliminary hearing under this subsection, the probation officer shall file with the court a petition for revocation of probation, as described in subsection 2. A copy of the petition shall be furnished to the person on probation prior to the court hearing on the alleged violation.

6. A person incercerated pursuant to subsection 4 shall be afforded a preliminary hearing only if he has been released on bail on the pending criminal charge or pending appeal following a conviction, and has not been released on bail on the alleged violation of probation. A person not entitled to a preliminary hearing under this subsection shall be furnished with a copy of the petition prior to the court hearing on the alleged violation.

New

7. The running of the period of probation shall be tolled upon either the delivery of the summons, the filing of the written notice with the court that the person cannot be located, or the arrest of the person, as provided for in subsection 1. ~~If the person fails to appear in court after having been served with a summons, or if written notice is filed with the court that the person cannot be located, the court may issue a warrant for the arrest of the person. The court may then order the person committed with or without bail, pending the court hearing or pending a preliminary hearing, if the person is entitled to such a hearing under subsection 3.~~ The running of the period of probation shall cease to be tolled upon a finding of no probable cause under subsection 4 of section 1205-A, or upon a disposition of the charges of probation violation pursuant to section 1206. If there is a finding of no probable cause, or if the person is found not to have violated his probation, the running of the period of probation shall be deemed not to have been tolled.

former sub-§ 4

17-A M.R.S.A. §2, sub-§9, as enacted by P.L. 1975, c. 499, §1, is repealed and the following enacted in place thereof:

9. "Dangerous weapon" or "deadly weapon."

A. "Use of a dangerous weapon" or "use of a deadly weapon" means the use of a firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used is capable of producing or threatening death or serious bodily injury.

B. "Armed with a dangerous weapon" or "armed with a deadly weapon" means in actual possession of

(1) a firearm; or

(2) any device designed as a weapon and capable of producing death or serious bodily injury; or

(3) any other device, instrument, material or substance, whether animate or inanimate, which in the manner it is intended to be used is capable of producing or threatening death or serious bodily injury. For purposes of this definition, the intent may be conditional.

C. For purposes of this subsection, a thing presented in a covered or open manner as a dangerous weapon shall be presumed to be a dangerous weapon.

17-A M.R.S.A. §1204, sub-§2, ¶G, as last repealed and replaced by P.L. 1975, c. 740, §§110, 110-A, is amended to read:

G. To refrain from possessing any ~~firearms~~ firearm or ~~other~~ any ~~dangerous~~ weapon capable of producing death or serious bodily injury.

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Boston Sunday Herald Advertiser

BOSTON SUNDAY HERALD ADVERTISER, MAY 16, 1976

By JIM MORSE

Maine dispenses new-type justice

- *Killing an intruder who refuses to leave is legalized*
- *Small amounts or marijuana are decriminalized*
- *Mandatory sentences are spelled out—with no parole*

AUGUSTA, Me. — Homeowners in Maine now may legally take the life of any criminal intruder, even an unarmed one, who refuses to leave after being warned.

Prostitutes in the Pine Tree State no longer need fear going to jail.

Possession of small amounts of marijuana has been decriminalized.

However, there is no longer an early release for convicted criminals. A five-year prison sentence means just that. Parole has been eliminated.

These are all part of Maine's new State Criminal Code, which was adopted by the legislature last year, revised this year, and took effect May 1st — swiftly changing the state's criminal procedures from among the antiquated in the nation to the newest.

It was the first comprehensive redrafting of the criminal statutes here since Maine became a state in 1820.

The new code will be under the close inspection of legal, judicial and law enforcement agencies throughout the nation.

"We're serving as a pace-setter for the country," says Gov. James B. Longley, "and although it's far too soon to make any judgment, we're hearing expressions of interest from all sections. (California Gov.) Jerry Brown's people appear to be especially interested."

"What we've done," explains Maine's 41-year-old attorney general, Joseph E. Brennan, who was an unsuccessful Democratic gubernatorial candidate two years ago when Longley became the only Independent governor in the U.S., "is to make a re-evaluation of what types of behavior should be subject of criminal law. This is the first comprehensive revision of the substantive criminal law in the history of the state.

"We've gone from one of the most outdated criminal codes in the nation to what is unquestionably the most modern. The old code was put together like a crazy quilt. If a legislator got peeved over something, he would introduce a bill against it and in many cases it became law."

BRENNAN SAYS that in most cases, victimless crimes have been taken off the books.

"Our objective," he says, "is to have fewer laws, but to strictly enforce the ones we do have.

"For example, the prohibitions against certain forms of sexual conduct between consenting adults, previously found in the crimes against nature, adultery and fornication statutes, have been removed.

"Similarly, the criminal law no longer extends to social gambling, and the possession of less than an ounce and one-half of marijuana has become a civil violation."

Contrary to some opinion, Brennan says the changes in the criminal code do not reflect an endorsement of these activities by the state, but rather a recognition that the limited resources and severe consequences of the criminal law should not apply to what is essentially private conduct.

Brennan, a native of Portland who received his bachelor of science degree from Boston College before graduating from the University of Maine School of Law, is convinced that severe sentences are not the answer to the crime problem — in Maine or elsewhere.

"THE ANSWER is speedy justice," he says, "and we've attempted to insure that speed by our new criminal code. If someone is arrested for assault today, he should go on trial next week, not next year. You don't spank a child for punishment six months after he or she has done something wrong. That would have no effect.

"Speedy sentencing is a far greater deterrent than severe sentencing. That's what our goal should be. We must speed up the system. People don't like to go to jail. It just isn't a nice place to be.

"If a potential criminal knew that, if caught and convicted, he would be sentenced to jail next month for a six-month term, it would be more of a deterrent than if he knew he might get a six-year-term, but would not begin serving it for two or three years because of court delays, appeals and various other procedures available in the judicial system."

Brennan is also enthusiastic about his state's new criminal code because he believes it eliminates what he described as "selective enforcement."

He used this illustration to explain his point:

"If a well-dressed man with what is deemed a proper haircut is driving from Augusta to Boston and his car breaks down and he is unable to get help, he may atttempt to hitch-hike.

ATTY. GEN. BRENNAN
The aim: speedy justice

That's reasonable. And it is highly unlikely that he would be arrested.

"But, if under the same circumstances, the hitch-hiker was a long-haired youth wearing blue jeans, he'd probably be arrested so that the officers should shake him down to see if he was in the possession of narcotics. That is not a fair system, nor is it equal justice."

THREE CHANGES in the criminal code have proven highly controversial. They are:

- Reducing the penalty for being in possession of a small amount of marijuana,
- Mandating prison sentences for specific crimes,
- Giving homeowners the right to take the life of any criminal intruder who refuses to leave after being warned.

Longley says his greatest concern is the relaxation of the law as it applies to possession of marijuana, which was approved by the legislature over the objection of the Maine Police Chiefs Ass'n.

Possession of less than one and one-half ounces of marijuana is now punishable only under civil laws by fines. It no longer is a criminal offense.

"Teachers, guidance counselors and law enforcement officials are telling me they believe we made a mistake," the governor says. "I hope not. But if we did, we must take corrective measures if needed.

"It's our obligation to protect society, especially the youth. We don't want them to be playing Russian roulette with their lives.

"If we did make a mistake, I hope we recognize it in time to make appropriate changes."

While he admits he expects "there will be more marijuana around," Atty. Gen. Brennan is more optimistic than the governor about the law's success.

"It is still a crime to sell marijuana," Brennan says. "And the buyer, in my opinion, may be a conspirator in the crime of selling, which opens the possibility of criminal conduct. This will have to be tested in the courts.

"If someone is found in possession of marijuana, you know he didn't pick it off a tree or find it in a Christmas stocking. Chances are he bought it, which could mean that he conspired with a seller."

GERALD A. PETRUCCELLI, who teaches at the University of Maine Law School, wrote in the Maine Law Review that "personal use of marijuana in and of itself — apart from such matters as driving under the influence, consequential loss of employment or the like — is definitely harmless to persons other than the user."

The old law provided fines of up to $1000 and jail terms of up to 11 months for possession of any amount of marijuana.

Local and state police still aren't ecstatic about the decriminalization process.

"Where will the kids get the money to buy the stuff?" asks Sgt. William E. Farrell of the Portland Police Department's Youth Aid Bureau. "They'll go out and steal it."

Russell Norris, who also works for the Portland Youth Aid Bureau, believes the increased availability of marijuana to minors, which he says will result from decriminalization, will contribute to an overall increase in juvenile crime.

The policy of the new code is that if conduct is not serious enough to warrant a jail term, it becomes a civil violation.

However, the law does include provisions for mandatory prison terms for persons convicted of crimes committed with firearms. The stiff treatment for armed criminals is intended to reduce pressure for control of private ownership of guns and curb abuses of firearms.

Jail terms of up to four years are mandatory for criminals who use firearms in their offenses. And mandatory sentences are called for in dealing with burglars convicted for a second or subsequent offense.

With the exception of certain premeditated cases of murder, no crime in Maine is punishable by more than 20 years in jail.

Mandatory life sentences are ordered for six classes of homicide, including slayings by hired killers and murder by torture. Mandatory sentences of more than 20 years are set for other premeditated killings.

ONE OF THE MOST controversial changes in the code is the one which gives the sanction of law to any homeowner who guns down a criminal intruder who refuses to leave the premises after being warned.

It extends the former provision that deadly force could be used against an intruder in the home who posed a threat to human life and to protection of property.

"What the new law does," explains state Rep. Richard A. Spencer (D-Sebago Lake), "is to give the homeowner the right to say, 'Get out of here or I'm going to shoot you.'"

He said the new power could be used in the case of a criminal who, after being confronted, replied, "I'm not going to hurt you, but we have a truck here and we're just going to move all your stuff out."

"It's going to let these people know we respect a person's home — it's still a castle," Rep John J. Joyce (D-Portland) declared. "It's easy to sit in the legislature and split hairs, but out there in that jungle, people live in fear."

In the minority were legislators such as Stephen T. Hughes (D-Auburn), who called the law a sympton of the "hysteria to do something about breaking and entering."

In addition, Atty. Gen. Brennan offers this warning: "If it is not absolutely necessary for a homeowner to use a gun, but he shoots to kill, he may have a serious problem. There must be an element of reasonableness.

"That reasonableness would not exist, for example, if a healthy, 200-pound man found a 14-year-old girl in his home and shot her. On the other hand, if an elderly man shot a young intruder, there would be no problem."

Brennan said the state's district attorneys will "strictly and narrowly" interpret the deadly force portion of the code to forestall abuse of the law. It obviously involves much more than a carte blanche to take pot shots at trespassers.

While prostitution remains a crime in Maine, no longer will its practitioners be liable for up to three years behind bars for convictions. The new code provides fines of $250 or twice the fee a prostitute receives. Those promoting prostitution or compelling others to become prostitutes can still be jailed, however.

"Let's face it," Brennan says, "we don't have a major prostitution problem in Maine. If you'll pardon the expression, this ain't Times Square nor the Combat Zone in my favorite city (Boston)."

SURPRISINGLY, with an Independent governor, a Senate controlled by the Republicans, and a House ruled by a majority of Democrats, the criminal code was passed by the legislature with a minimum of political infighting.

"It was a non-partisan effort," Gov. Longley explains, "and much of the credit should go to Sen. Samuel Collins, Jr., of Rockland, who is a veteran lawyer and chairman of the Joint House-Senate Judiciary Committee. This code has been his baby from the start.

Collins says a blue-ribbon commission headed by former Atty. Gen. Jon Lund of Augusta began studying a new criminal code three years ago, and named Sanford Fox, a Boston College Law School Professor, as its chief counsel.

"Fox was instrumental in helping to make big policy judgments," Collins says. "Following extensive public hearings throughout the state, the code was passed by the legislature last year, and revisions were made in a special session this year.

Brennan, Collins and Longley are happy with the new code, while admitting that it will take time to determine its effectiveness.

IN ELIMINATING indefinite sentences, the code puts Maine alone in the nation. Judges must fix a sentence at a specific number of years or months, not subject to early release for parole. Prisoners can still get some time off for good behavior, however.

"Once a prisoner is released, he's released with no strings attached and no close supervision," says Brennan, who claims parole has proved ineffective in Maine.

"The enactment of the Maine Criminal Code represents a re-evaluation of both the relationship of the individual and society and the role of the criminal law in governing that relationship," Brennan says. "A convicted person is likely to suffer not only a loss of liberty, but also social and moral disgrace.

"In the past, the state had two alternatives when confronted with lesser types of misconduct — it could either apply the criminal law, with all of its severe ramifications for the wrongdoer, or acquiesce in the conduct.

"Through its adoption of civil violation, the new code offers a middle ground which enables the state to protect the interests of society without branding the individual with the stigma of a criminal conviction."

The young attorney general says that although the code uses "civil violations" very sparingly, this remedy, if it proves successful, could well develop as an important tool in regulating conduct which does not properly belong in the criminal sphere.

OFFENSES INVOLVING DANGER TO THE PERSON

ARTICLE 210. CRIMINAL HOMICIDE

Section 210.0. Definitions.

In Articles 210-213, unless a different meaning plainly is required:

(1) "human being" means a person who has been born and is alive;

(2) "bodily injury" means physical pain, illness or any impairment of physical condition;

(3) "serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ;

(4) "deadly weapon" means any firearm, or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury.

STATUS OF SECTION

Presented to the Institute as Section 201.60 of Tentative Draft No. 9, and considered at the May 1959 meeting.

The Section was reprinted as Section 211.4 in Tentative Draft No. 11, page 9. One minor verbal change has been made: the words "permanent or," which appeared just before the words "protracted loss" in clause (3), have been deleted as superfluous.

Section 210.1. Criminal Homic

(1) A person is guilty of c
posely, knowingly, recklessly or
of another human being.

(2) Criminal homicide is
negligent homicide.

STATUS OF

Presented to the Institute in
sidered at the May 1959 meeting.

The Section was then numbere

For Commentary, see Tentative

The terms "purposely, knowin
defined in Section 2.02. Supra p.
requires proof of "substantial an
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Section 210.2. Murder.

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(b) it is committed r
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committing or attemptin
deviate sexual intercours
arson, burglary, kidnappi

Section 210.1. Criminal Homicide.

(1) A person is guilty of criminal homicide if he purposely, knowingly, recklessly or negligently causes the death of another human being.

(2) Criminal homicide is murder, manslaughter or negligent homicide.

STATUS OF SECTION

Presented to the Institute in Tentative Draft No. 9, and considered at the May 1959 meeting.

The Section was then numbered 201.1.

For Commentary, see Tentative Draft No. 9, p. 25.

The terms "purposely, knowingly, recklessly or negligently" are defined in Section 2.02. Supra p. 25. The definition of negligence requires proof of "substantial and unjustifiable risk" and "gross deviation" from the standard of reasonable care. Part I of the Code also defines the excuses and justifications, e.g., self-defense, which render a homicide non-criminal.

Section 210.2. Murder.

(1) Except as provided in Section 210.3(1)(b), criminal homicide constitutes murder when:

(a) it is committed purposely or knowingly; or

[(b) it is committed recklessly under circumstances manifesting extreme indifference to the value of human life.]Such recklessness and indifference are presumed if the actor is engaged or is an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, rape or deviate sexual intercourse by force or threat of force, arson, burglary, kidnapping or felonious escape.

(2) Murder is a felony of the first degree [but a person convicted of murder may be sentenced to death, as provided in Section 210.6].

STATUS OF SECTION

Presented to the Institute as Section 201.2 of Tentative Draft No. 9, and considered at the May 1959 meeting.

For Commentary, see Tentative Draft No. 9, p. 28.

The only substantive change is the insertion of the reference to deviate sexual intercourse in paragraph (b) of subsection (1).

Section 210.3. Manslaughter.

(1) Criminal homicide constitutes manslaughter when:

(a) it is committed recklessly; or

(b) a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the actor's situation under the circumstances as he believes them to be.

(2) Manslaughter is a felony of the second degree.

STATUS OF SECTION

Presented to the Institute as Section 201.3 of Tentative Draft No. 9, and considered at the May 1959 meeting.

For Commentary, see Tentative Draft No. 9, p. 40.

Section 210.4. Negligent Homicide.

(1) Criminal homicide constitutes negligent homicide when it is committed negligently.

(2) Negligent homicide is a felony of the third degree.

STATUS OF SECTION

Presented to the Institute as Section 201.4 of Tentative Draft No. 9, and considered at the May 1959 meeting.

For Commentary, see Tentative Draft No. 9, p. 49.

Section 210.5. Causing or Aiding Suicide.

(1) Causing Suicide as Criminal Homicide. A person may be convicted of criminal homicide for causing another to commit suicide only if he purposely causes such suicide by force, duress or deception.

(2) Aiding or Soliciting Suicide as an Independent Offense. A person who purposely aids or solicits another to commit suicide is guilty of a felony of the second degree if his conduct causes such suicide or an attempted suicide, and otherwise of a misdemeanor.

STATUS OF SECTION

Presented to the Institute as Section 201.5 of Tentative Draft No. 9, and considered at the May 1959 meeting.

For Commentary, see Tentative Draft No. 9, p. 56.

The section was recommitted to the Reporters for consideration of various proposals and comments. It has been substantially revised.

Subsection (1) formerly read: "A person is deemed to have caused the death of another who commits suicide only if he purposely causes such suicide by force, duress or fraud." Although the comments made it clear that the object and effect of this formulation were to subject such behavior to the penalty for murder or manslaughter, as the case might be, some readers of the original text misunderstood it as defining in subsection (1) an offense for which subsection (2) prescribed the penalties. The revision eliminates the possibility of misconstruction. "Deception" has been substituted for "fraud" because we do not wish to leave open a possible interpretation of "fraud" as requiring motive of personal gain.

Subsection (2) formerly authorized second degree felony penalties "if suicide occurs." This has been changed to require proof of